

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

EDGAR C.,

Petitioner,

vs.

**EASTERN LOS ANGELES
REGIONAL CENTER,**

Respondent.

OAH No. L 2006080126

Early Intervention Services Act
(Gov. Code, § 95000 et seq.)

**DECISION DENYING
PETITIONER'S APPEAL**

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on August 23, 2006, in Alhambra.

Petitioner was represented by his mother and father.¹

Gerard A. Torres, Supervisor, Consumer Services Unit, represented Respondent Eastern Los Angeles Regional Center (also referred to as the Regional Center or ELARC).

The parties presented testimonial and documentary evidence, and gave closing arguments. The record was thereafter closed and the matter submitted for decision at the conclusion of the hearing.

ISSUE

Shall the Regional Center increase Petitioner's center-based infant stimulation services from two times per week to three times per week?

EVIDENCE RELIED UPON

Documentary: Regional Center exhibits A-F.

Testimonial: Petitioner's mother and father.

¹ Petitioner and his family are referred to in a way intended to protect their privacy.

FACTUAL FINDINGS

1. Petitioner is a 31-month-old boy, who is a Regional Center consumer, in the Early Start Program, based upon his diagnosis of a speech and language delay.
2. On July 26, 2006, Petitioner's mother requested Respondent to fund the service at issue in this case.
3. By letter dated July 27, 2006, Respondent denied the request, stating that a Regional Center speech and language consultant had reviewed Petitioner's file and determined that such an increase was not warranted, in that his needs were already being met by appropriate services.
4. On August 3, 2006, a Due Process Hearing Request was timely submitted on Petitioner's behalf, which appealed Respondent's denial of funding and requested the hearing that ensued.
5. Petitioner attends an Early Intervention Program two days per week, four hours per day, at the Atwater Park Center in Los Angeles (Atwater program). The Regional Center refers to that program as a center-based infant stimulation service. Petitioner's parents testified that they requested funding for a third day per week at the Atwater program because Petitioner is much better behaved at home on days when he goes there.
6. In addition to the Atwater program, the Regional Center also funds Petitioner to receive the following services: speech and language therapy sessions, twice per week; a recently completed occupational therapy (OT) assessment, which has led to funding for Petitioner to receive two OT therapy sessions per week, two hours per session, beginning on August 30, 2006; and a recent behavior modification assessment, the results of which the parties were awaiting at the time of the hearing. The Regional Center's hearing representative, Mr. Torres, stipulated that the Regional Center will fund whatever behavior modification services are recommended in that assessment report.
7. On July 26, 2006, the Regional Center's speech and language consultant, Myrna Ramirez, reviewed Petitioner's case file in consideration of the service request at issue in this case. Ms. Ramirez concluded that a third day of the Atwater program was not warranted, because Petitioner's needs can be met through the current services being offered or contemplated by the Regional Center, including the pending behavior modification assessment. The opinion of Ms. Ramirez is given weight in this matter given her expertise in speech and language, and considering that Petitioner's eligibility for Early Start services is due to a speech and language delay.

8. A report from the Atwater program, dated August 8, 2006, was also considered. Petitioner is described therein as presenting at below age level in all areas of his development, except gross motor skills. Nonetheless, it is the recommendation of the Atwater program staff that Petitioner not receive a third day of programming there per week if Petitioner receives OT therapy with sensory integration as soon as possible as well as behavior modification services by sometime in September 2006. The report from the Atwater program is given considerable weight in this matter since it is from the provider of the requested service.

LEGAL CONCLUSIONS

1. Jurisdiction for this case is governed by the federal Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1431 et seq.), and the California Early Intervention Services Act (CEISA) (Gov. Code, § 95000 et seq.), which supplements the IDEA. Each act is accompanied by pertinent regulations. Thus, both federal and state law applies to this case. Petitioner properly and timely presented, in conformity with these laws, a due process hearing request, and therefore jurisdiction for this case was established. (Factual Findings 1-4.)

2. When a person seeks to establish eligibility for government benefits or services, the burden of proof is on him. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits]; see also, 34 C.F.R. § 303.425(b) (1999).) Petitioner's parents therefore bear the burden of proof in this case, since they appeal from Respondent's denial of their request for an initial service Respondent has not yet agreed to fund. (Factual Findings 1-4.)

3A. Petitioner's parents failed to meet their burden of establishing that Petitioner is entitled to funding to attend a third day per week at the Atwater program.

3B. Early intervention services are defined as those services "designed to meet the developmental needs of each eligible infant or toddler and the needs of the family related to the infant or toddler's development." (20 U.S.C. § 1432(4)(A); Cal. Code Regs., tit. 17, § 52000, subd. (b)(12).)

3C. In this case, the Regional Center presented persuasive evidence from experts, i.e. a speech and language consultant and staff from the Atwater program, indicating that the services currently funded or contemplated for Petitioner are meeting his developmental needs, and that, therefore, a third day of programming at the Atwater program is not warranted. Petitioner's parents failed to sufficiently refute that evidence with their observations that Petitioner is better behaved at home on days when he attends the Atwater program. However, because this conclusion is reached assuming Petitioner is now receiving two OT sessions per week, and that he and his parents will receive behavior modification training in September 2006, the Order in this case will include a provision that those services also be funded forthwith. (Factual Findings 1-8.)

ORDER

The Eastern Los Angeles Regional Center shall not increase Petitioner's center-based infant stimulation services from two times per week to three times per week.

The Eastern Los Angeles Regional Center shall fund Petitioner to receive occupational therapy twice per week, by no later than September 2006; and for Petitioner and his family to begin receiving the behavior modification services recommended in the report following the recent behavior modification assessment, by no later than September 2006. The Regional Center shall take all best efforts to insure that the behavior modification assessment report is issued forthwith, if it has not already been issued.

DATED: September 7, 2006

ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearings